IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.423 OF 2004

Royal Education Society ... Petitioners

v/s

LIS (India) Construction Co.Pvt.Ltd. ... Respondents

Prof.Dr A.R. Undre, President of Petitioners in person.

Ms Lambay i/b M/s Lambay and Co. for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 14TH NOVEMBER 2005.

P.C. :-

1. By this petition filed under section 34 of the Arbitration and Conciliation Act 1996, the petitioners challenge the award made by the Arbitral Tribunal. The disputes which have been decided by the Arbitral Tribunal relate to the contract of construction work of Girls' College which was given by the petitioners to the respondents. Out of the said contract, certain disputes about the payment to be made by the petitioners to the respondents arose, those disputes as per the arbitration clause contained in the contract were referred to the Arbitral Tribunal. The Arbitral Tribunal, after hearing both the sides, has made the award. On behalf of the petitioners and he respondents, no oral arguments were advanced. Both the parties submitted their written arguments. I have gone through the record. I have also gone through the written submissions. Perusal of the award shows that the Arbitral Tribunal consisted of technical persons who had knowledge of the construction business and they have given detailed reasons for the findings that they have recorded in the award. Therefore, any challenge to such an award has to be considered keeping in mind that the award is made by persons who are functioning in trade and the limited jurisdiction of this Court to interfere with the award

under section 34 of the Arbitration and Conciliation Act 1996. If the matter is perused from this point of view, the only contention that can be said to be a challenge which can be raised under section 34 to the award is that the claim for payment made by the respondent - contractor in relation to the construction of the basement was out of the jurisdiction of the Arbitral Tribunal. According to the petitioners, when the tenders were invited and the work was allotted, the basement was not contemplated to be constructed and therefore, construction of basement was not part of the contract and therefore the disputes relating to the payments claimed by the respondents for construction of the basement were not within the jurisdiction of the Arbitral Tribunal. Perusal of the award shows that the point of jurisdiction of the Arbitral Tribunal was raised before the Arbitral Tribunal but that objection to the jurisdiction was given up and the petitioners conceded that the Arbitral Tribunal has jurisdiction. In this view of the matter therefore, in my opinion, the petitioners would not be entitled to challenge the jurisdiction of the Arbitral Tribunal. Even perusal of the record shows that one of the conditions in the contract was that the schedule of quantities given in the contract is provisional and the petitioners had reserved their right to increase or decrease the quantity or any item of work. It appears that though

the construction of basement was not part of the original plan when the work was to commence, seeing the nature of the soil and the land, the Architect of the petitioners decided that it is necessary to construct the building with basement and the plan of the building alongwith basement was prepared and the contractor was directed to carry on work as per that plan. In all 16 bills prepared by the respondents for the work done on the site were duly certified by the petitioners' Architect and these bills include the work done in respect of basement and for which payments were made by the petitioners. Thus, really speaking, the dispute between the parties which went to arbitration was not regarding nonpayment of bills for construction of the basement. The dispute that was referred to arbitration was in relation to two bills i.e. 17th running bill and 18th running bill. It appears from the record that these bills did not relate to the work of basement. So far as the 17th running bill is concerned, it was duly certified by the petitioners' Architect and the 18th running bill was also certified by the petitioners' engineer's representative. It appears that thus the work of basement was directed to be carried on by the petitioners in exercise of its power under the contract as an extra item of work and therefore, even construction of basement was under the contract and therefore, even if it is assumed that the disputes

referred to arbitration related to the claim in regard to the construction of basement, still it was within the jurisdiction of the Arbitral Tribunal. So far as the other challenges raised in the written submissions made on behalf of the petitioners are concerned, I find that none of them can be considered as challenges to the award under section 34 of the Arbitration and Conciliation Act 1996 because they mainly challenge the finding of fact recorded by the Arbitral Tribunal. Taking overall view of the matter therefore, in my opinion, there is no substance in the petition. The petition therefore fails and is dismissed. The petitioners are directed to pay costs of this petition to the respondents as incurred by the respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.